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9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 KEVIN MORRIS, and GLENN R.
 12 SEMOW, On Behalf of Themselves and
 All Others Similarly Situated,
 13 Plaintiffs,
 14 v.
 15 BMW OF NORTH AMERICA, LLC,
 16 Defendants.

CASE NO. C 07-02827 WHA
 [Judge William H. Alsup)

DEFENDANT BMW OF NORTH
 AMERICA, LLC'S NOTICE OF
 MOTION AND MOTION TO
 DISMISS PLAINTIFFS' COMPLAINT
 [F.R.C.P. 12(b)(6) and(9)(b)]

17 Date: August 23, 2007
 18 Time: 8:00 a.m.
 19 Judge: William H. Alsup

20 Action Filed: May 31, 2007

21 **TO PLAINTIFFS AND TO THEIR ATTORNEYS OF RECORD:**

22 NOTICE is hereby given that on August 23, 2007 at 8:00 a.m., or as soon
 23 thereafter as the matter may be heard, defendant BMW of North America, LLC
 24 ("BMWNA"), will and does hereby, move the Court, pursuant to Rule 12(b)(6) and
 Rule 9(b) of the Federal Rules of Civil Procedure, for an order dismissing with
 25 prejudice plaintiffs' Complaint in its entirety.
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This Motion to Dismiss is made on the grounds that plaintiffs' Complaint fails

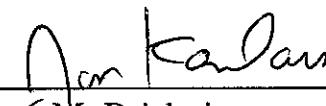
1 to state a claim upon which relief can be granted. Plaintiffs are unable to plead a claim
 2 under California's Unfair Competition Law ("UCL"), California Business &
 3 Professions Code, § 17200, *et seq.*, because neither plaintiff suffered injury and lost
 4 money as a result of the alleged unfair competition. Neither plaintiff alleges they
 5 suffered injury in fact and lost money as a result of an alleged unlawful business
 6 practice. Plaintiffs do not allege facts sufficient to state a claim based on an unfair
 7 business practice. Plaintiffs do not allege facts sufficient to state a claim for a
 8 fraudulent business practice. Plaintiffs' Complaint fails to meet Rule 9(b) standards
 9 for pleading a claim based on fraud. Plaintiffs' Complaint fails to plead a claim for
 10 violation of California Consumer Legal Remedies Act ("CLRA") by allegedly
 11 inserting an unconscionable provision in a contract since plaintiffs do not allege they
 12 were involved in any transaction with BMWNA and do not allege they were parties to
 13 any contract with BMWNA. Plaintiffs fail to allege facts to support a claim for breach
 14 of implied warranty of merchantability as plaintiffs' Complaint effectively admits that
 15 their vehicles provided safe, reliable transportation.

16 This motion is based on the files, records and proceedings, this Notice of
 17 Motion, the Memorandum of Points and Authorities submitted concurrently, and the
 18 argument of counsel.

19 Respectfully submitted,

20 DATED: July 17, 2007

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22 By: 

23 Roy M. Brisbois
 24 Jon P. Kardassakis
 25 Attorneys for Defendant,
 26 BMW OF NORTH AMERICA, LLC